Government of Kerala
1981

Reg. No. KL/TV(N)/12

KERALA GAZETTE

EXTRAORDINARY

PUBLISHED BY AUTHORITY

Vol. XXVI] Trivandrum, Friday, 8th May 1981 / 18th Vaisakha 1903 [No. 366

GOVERNMENT OF KERALA

Law (Legislation-A) Department

NOTIFICATION

No. 7064-Leg. (A) 2/81/Law. *Dated, Trivandrum, 8th May, 1981/ 18th Vaisakha, 1903.*

The following Ordinance promulgated by the Governor on the 8th day of May, 1981, is hereby published for general information.

By order of the Governor,

K. Viswanathan Nair,
Special Secretary (Law).

PRINTED AND PUBLISHED BY THE S. G. P. AT THE GOVERNMENT PRESS, TRIVANDRUM, 1981

33/1586/MC

ORDINANCE No. 3 OF 1981

THE KERALA REQUISITIONING AND ACQUISITION OF PROPERTY ORDINANCE, 1981

Promulgated by the Governor of Kerala in the Thirty-second Year of the Republic of India.

AN

ORDINANCE

to provide for the requisitioning and acquisition of property for public purposes, not being purposes of the Union.

Preamble.—WHEREAS the Legislative Assembly of the State of Kerala is not in session and the Governor of Kerala is satisfied that circumstances exist which render it necessary for her to take immediate action;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 213 of the Constitution of India, the Governor of Kerala is pleased to promulgate the following Ordinance:—

1. *Short title and commencement.*—This Ordinance may be called the Kerala Requisitioning and Acquisition of Property Ordinance, 1981.

(2) It shall come into force at once.

2. *Definitions.*—In this Ordinance, unless the context otherwise requires,—

(a) "award" means any award of the District Collector made under section 8;

(b) "landlord" means any person who for the time being is receiving, or is entitled to receive, the rent of any premises, whether on his own account, or on account or on behalf or for the benefit, of any other person or as a trustee, guardian or receiver for any other person, or who would so receive the rent or be entitled to receive the rent if the premises were let to a tenant;

(c) the expression "person interested", in relation to any property, includes all persons claiming, or entitled to claim, an interest in the compensation payable on account of the requisitioning or acquisition of that property under this Ordinance;

(d) "premises" means any building or part of a building and includes—

(i) the garden, grounds and out-houses, if any, appertaining to such building or part of a building;

(ii) any fittings affixed to such building or part of a building for the more beneficial enjoyment thereof;

(e) "prescribed" means prescribed by rules made under this Ordinance;

(f) "property" means movable or immovable property of every kind and includes any rights in or over such property;

(g) "State" means the State of Kerala;

(h) "tenant" means any person by whom or on whose account rent is payable for any premises and includes such sub-tenants and other persons as have derived title under the tenant under any law for the time being in force.

3. *Power to requisition property.*—(1) Where the Government are of opinion that any property is needed or likely to be needed for any public purpose, not being a purpose of the Union, and that the property should be requisitioned, the Government—

(a) shall call upon the owner or any other person who may be in possession of the property, by notice in writing (specifying therein the purpose of the requisition) to show cause,—

(i) in the case of immovable property, within fifteen days, and

(ii) in the case of movable property, within three days,

of the date of service of such notice on him, why the property should not be requisitioned.

(b) may, by order, direct that neither the owner of the property nor any other person shall, without permission of the Government, dispose of, or structurally alter, the property or let it out to a tenant until the expiry of such period, not exceeding two months, as may be specified in the order.

(2) If, after considering the cause, if any, shown by any person interested in the property or in possession thereof, the Government are satisfied that it is necessary or expedient so to do, they may, by order in writing, requisition the property and may make such further orders as appear to them to be necessary or expedient in connection with the requisitioning:

Provided that no property or part thereof—

(a) which is *bona fide* used by the owner thereof as the residence of himself or his family; or

(b) which is exclusively used for religious worship by the public or as a school, college, hospital, dispensary, creche or public library or as an orphanage or other similar public charitable institution or for the purpose of accommodation of persons directly

connected with the management of such place of worship or such hospital, dispensary, creche, orphanage or charitable institution, shall be requisitioned:

Provided further that where the requisitioned property consists of premises which are being used as a residence by a tenant for not less than two months immediately preceding the date of the service of notice under sub-section (1), the Government shall provide such tenant with alternative accommodation which in their opinion is suitable.

4. *Power to take possession of requisitioned property.*—(1) Where any property has been requisitioned under section 3, the Government may, by notice in writing, order the owner as well as any other person who may be in possession of the property to surrender or deliver possession thereof to the Government or any person duly authorised by them in this behalf within such time as may be specified in the notice.

(2) If any person refuses or fails to comply with an order made under sub-section (1), the Government or any person duly authorised by them in this behalf may take possession of the property and may, for that purpose, use such force as may be necessary.

5. *Rights over requisitioned property.*—(1) All property requisitioned under section 3 shall be used for such purposes as may be mentioned in the notice of requisition.

(2) Where any premises are requisitioned under section 3, the Government may, after notice, order the landlord to execute such repairs as may be necessary and are usually made by landlords in that locality and as may be specified in the notice, within such reasonable time as may be mentioned therein, and if the landlord fails to execute any repairs in pursuance of such order, the Government may cause the repairs specified in the order to be executed at the expense of the landlord and the cost thereof may, without prejudice to any other mode of recovery, be deducted from the compensation payable to the landlord.

6. *Release from requisitioning.*—(1) The Government may, at any time, release from requisition any property requisitioned under this Ordinance and shall, as far as possible, restore the property in as good a condition as it was when possession thereof was taken subject only to the changes caused by reasonable wear and tear and irresistible force:

Provided that where the purposes for which any requisitioned property was being used cease to exist, the Government shall, unless the property is acquired under section 7, release that property, as soon as may be, from requisition.

(2) Where any property is to be released from requisition, the Government may, after such inquiry, if any, as they may in any case consider

necessary to make or cause to be made, specify, by order in writing, the person to whom possession of the property shall be given and such possession shall, as far as practicable, be given to the person from whom possession was taken at the time of the requisition or to the successors-in-interest of such person.

(3) The delivery of possession of the property to the person specified in an order under sub-section (2) shall be a full discharge of the Government from all liability in respect of the property, but shall not prejudice any rights in respect of the property which any other person may be entitled by due process of law to enforce against the person to whom possession of the property is given.

(4) Where any person to whom possession of any requisitioned property is to be given is not found and has no agent or other person empowered to accept delivery on his behalf, the Government shall cause a notice declaring that the property is released from requisition to be published in the Gazette and in the case of immovable property such notice shall also be affixed on some conspicuous part of the property.

(5) When a notice referred to in sub-section (4) is published in the Gazette, the property specified in such notice shall cease to be subject to requisition on and from the date of such publication and shall be deemed to have been delivered to the person entitled to possession thereof and the Government shall not be liable for any compensation or other claim in respect of the property for any period after the said date.

(6) Where any property requisitioned under this Ordinance or any material part thereof is wholly destroyed or rendered substantially and permanently unfit for the purpose for which it was requisitioned by reason of fire, earth-quake, tempest, flood or violence of any army or of a mob or other irresistible force, the requisition shall, at the option of the Government, be void:

Provided that the benefit of this sub-section shall not be available to the Government—

(i) where the injury to such property is caused by any wrongful act or default of the Government, or

(ii) where such injury to such property would not have been caused but for the requisition.

7. *Power to acquire requisitioned property.*—(1) Where any property is subject to requisition, the Government may, if they are of opinion that it is necessary to acquire the property for a public purpose, not being a purpose of the Union, at any time acquire such property by publishing in the Gazette a notice to the effect that the Government have decided to acquire the property in pursuance of this section:

Provided that before issuing such notice, the Government shall call upon the owner of, or any other person who, in the opinion of the Government, may be interested in, such property to show cause why the property should not be acquired; and after considering the cause, if any, shown by any person interested in the property and after giving the parties an opportunity of being heard, the Government may pass such orders as they deem fit.

(2) When a notice as aforesaid is published in the Gazette, the requisitioned property shall, on and from the beginning of the day on which the notice is so published, vest absolutely in the Government free from all encumbrances and the period of requisition of such property shall end.

(3) No property shall be acquired under this section except in the following circumstances, namely:—

(a) where any works have, during the period of requisition, been constructed on, in or over, the property wholly or partially at the expense of the Government and the Government decide that the value of, or the right to use, such works should be secured or preserved for the purposes of Government; or

(b) where the cost of restoring the property to its condition at the time of its requisition would, in the determination of the Government, be excessive and the owner declines to accept release from requisition of the property without payment of compensation for so restoring the property.

(4) Any decision or determination of the Government under sub-section (3) shall be final and shall not be called in question in any court.

(5) For the purposes of clause (a) of sub-section (3), "works" includes buildings, structures and improvements of every description.

8. *Principles and method of determining compensation in cases where immovable property is requisitioned or acquired.*—(1) Where any immovable property is requisitioned or acquired under this Ordinance, there shall be paid compensation the amount of which shall be determined in the manner and in accordance with the principles hereinafter set out, that is to say—

(a) where the amount of compensation can be fixed by agreement, it shall be paid in accordance with such agreement;

(b) where no such agreement can be reached, the Government shall, within two months of taking possession of the property under section 4, or of the publication of the notice under sub-section (1) of section 7, as the case may be, direct the District Collector within whose jurisdiction the property is situate to determine the amount of compensation;

(c) on receipt of a direction under clause (b), the District Collector shall, after such inquiry as may be prescribed and such further inquiry as he considers necessary, make an award determining the amount of compensation which appears to him to be just and specifying the person or persons to

whom such compensation shall be paid, and in making the award, he shall have regard to the circumstances of each case and the provisions of sub-sections (2) and (3), so far as they are applicable;

(d) where there is a dispute as to the person or persons who are entitled to the compensation, the District Collector shall decide such dispute and if the District Collector finds that more persons than one are entitled to compensation, he shall apportion the amount thereof among such persons.

(2) The amount of compensation payable for the requisitioning of any immovable property shall consist of—

(a) a recurring payment, in respect of the period of requisition, of a sum equal to the rent which would have been payable for the use and occupation of the immovable property if it had been taken on lease for that period; and

(b) such sum or sums, if any, as may be found necessary to compensate the person interested for all or any of the following matters, namely:—

(i) pecuniary loss due to requisitioning;

(ii) expenses on account of vacating the requisitioned premises;

(iii) expenses on account of re-occupying the premises upon release from requisition; and

(iv) damages (other than normal wear and tear) caused to the immovable property during the period of requisition, including the expenses that may have to be incurred for restoring the same to the condition in which it was, at the time of requisition.

(3) The compensation payable for the acquisition of any immovable property under section 7 shall be the price which the requisitioned immovable property would have fetched in the open market, if it had remained in the same condition as it was at the time of requisitioning and been sold on the date of acquisition.

9. *Payment of compensation relating to immovable property.*—(1) The amount of compensation payable under an award shall, subject to any rules made under this Ordinance, be paid by the Government to the person or persons entitled thereto in such manner and within such time as may be specified in the award.

(2) The amount of compensation payable under the award shall carry interest at the rate of six per cent per annum from the date on which it is specified as payable in the award.

10. *Appeals from awards in respect of compensation.*—(1) Any person aggrieved by an award of the District Collector made under section 8 may, within sixty days from the date of such award, prefer an appeal to the District Court within whose jurisdiction the immovable property is situate:

Provided that the District Court may entertain an appeal after the expiry of the said period of sixty days, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(2) On receipt of an appeal under sub-section (1), the District Court shall, after such inquiry as it deems necessary, pass such orders on the appeal as it thinks fit.

(3) An order of the District Court under sub-section (2) shall be final.

11. *Government and officers and authorities to have certain powers of civil courts.*—The Government or any officer or authority empowered by the Government under sub-section (1) of section 17 or the District Collector, while holding an inquiry under this Ordinance, shall have all the powers of a civil court, while trying a suit, under the Code of Civil Procedure, 1908 (Central Act 5 of 1908), in respect of the following matters, namely:—

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of any document;

(c) reception of evidence on affidavits;

(d) requisitioning any public record from any court or office;

(e) issuing commissions for examination of witnesses.

12. *Principles and method of determining compensation in cases where movable property is requisitioned or acquired.*—Where any movable property is requisitioned or acquired under this Ordinance, the compensation payable therefor and the person or persons to whom it should be paid shall be determined in accordance with the rules to be made in this behalf by the Government:

Provided that the rules so made for payment of compensation shall,—

(a) in respect of movable property requisitioned, provide for payment of rent or other return which the property would normally fetch if so allowed to be used; and

(b) in respect of movable property acquired, for payment of compensation at the market rate prevailing on the date of acquisition.

13. *Power to obtain information.*—The Government may, with a view to carrying out the purposes of section 3 or section 6 or section 7 or section 8 or section 12, by order, require any person to furnish to such officer, as may be specified in the order, such information in his possession as may be specified relating to any property which is requisitioned or acquired, or intended to be requisitioned or acquired, under this Ordinance.

14. *Power to enter and inspect.*—Any officer, empowered in this behalf by Government by general or special order, may enter and inspect any property for the purposes of determining whether and if so, in what manner, an order under this Ordinance should be made in relation to such property or with a view to securing compliance with an order made under this Ordinance.

15. *Service of notices and orders.*—(1) Subject to the provisions of this section and any rules that may be made under this Ordinance, every notice or order issued or made under this Ordinance shall,—

(a) in the case of any notice or order of a general nature or affecting a class of persons, be published in the Gazette; and

(b) in the case of any notice or order affecting an individual, corporation or firm, be served in the manner provided for the service of summons in rule 2 of Order XXIX or rule 3 of Order XXX, as the case may be, in the First Schedule to the Code of Civil Procedure, 1908 (Central Act 5 of 1908); and

(c) in the case of any notice or order affecting a person (not being a corporation or firm), be served on such person—

(i) by delivering or tendering it to that person; or

(ii) if it cannot be so delivered or tendered, by delivering or tendering it to any officer of such person or any adult male member of the family of such person, or by affixing a copy thereof on the outer door or on some conspicuous part of the premises in which that person is known to have last resided or carried on business or personally worked for gain; or

(iii) failing service by these means, by registered post.

(2) Where the ownership of the property is in dispute or where the persons interested in the property are not readily traceable and the notice or order cannot be served without undue delay, the notice or order may be served by publishing it in the Gazette, and where possible, by affixing a copy thereof on any conspicuous part of the property to which it relates.

16. *Easement not to be disturbed.*—No person interested in any immovable property requisitioned or acquired under this Ordinance shall, without the previous written consent of the Government or except for the purposes of effecting repairs or complying with a municipal requirement, wilfully disturb any convenience or easement attached to such property or remove, destroy or render unserviceable, anything provided for permanent use therewith or discontinue or cause to be discontinued any supply or service provided for the property.

17. *Delegation of powers.*—(1) The Government may, by notification in the Gazette, direct that any power conferred on them by or under this Ordinance shall, in such circumstances and under such conditions, if any, as may be specifid in the notification, be exercisable also by an officer or authority subordinate to the Government.

(2) All notifications issued under sub-section (1) shall be laid, as soon as may be possible, before the Legislative Assembly.

(3) An appeal shall lie to the Government from any decision made by the officer or authority subordinate to the Government to whom powers have been delegated under sub-section (1).

18. *Protection of action taken in good faith.*—(1) No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done in pursuance of this Ordinance or any order made thereunder.

(2) No suit or other legal proceeding shall lie against the Government, any officer or authority for any damage caused or likely to be caused by anything which is in good faith done or intended to be done in pursuance of this Ordinance or any order made thereunder.

19. *Bar of jurisdiction of civil courts.*—Save as otherwise expressly provided in this Ordinance, no civil court shall have jurisdiction in respect of any matter which the Government or the District Collector is empowered by or under this Ordinance to determine, in pursuance of any power conferred by or under this Ordinance.

20. *Penalty for offences.*—Whoever contravenes any provision of this Ordinance, or any rule made thereunder, or any order made or direction given under this Ordinance, or obstructs the lawful exercise of any power conferred by or under this Ordinance, shall be punishable with fine which may extend to one thousand rupees.

21. *Certain persons to be public servants.*—The District Collector and every officer empowered by the Government, while exercising any power or performing any duty under this Ordinance, shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code (Central Act 45 of 1860).

22. *Power to make rules.*—(1) The Government may, by notification in the Gazette, make rules for carrying out the purposes of this Ordinance.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the procedure to be followed by the Government in making inquiries under section 3 or section 6;

(b) the procedure to be followed by the District Collector in making inquiries under section 8;

(c) the principles to be followed in determining the amount of compensation and method of payment of such compensation;

(d) the principles to be followed in apportioning the cost of proceedings before the District Collector and on appeal under this Ordinance;

(e) the manner of service of notices and orders;

(f) any other matter which has to be, or may be, prescribed.

(3) Every rule made under this section shall be laid, as soon as may be after it is made, before the Legislative Assembly while it is in session for a total period of fourteen days which may be comprised in one session or in two successive sessions and if, before the expiry of the session in which it is so laid or the session immediately following, the Legislative Assembly makes any modification in the rule or decides that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so however that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

JOTHI VENCATACHELLUM,

GOVERNOR.

Government of Kerala
1981

Reg. No. KL/TV(N)/12

KERALA GAZETTE

EXTRAORDINARY

PUBLISHED BY AUTHORITY

Vol. XXVI] Trivandrum, Friday, 8th May 1981 / 18th Vaisakha 1903 [No. 367

GOVERNMENT OF KERALA

Food (B) Department

ORDER

No. 4344/B3/81/Food. *Dated, Trivandrum, 7th May,* 1981.

The order No. G.S.R. 308 (E)/Ess. Com./Sugar dated the 24th April, 1981 of the Government of India, Ministry of Agriculture, (Department of Food), New Delhi, published in the Gazette of India Extraordinary Part II, Section 3, Sub Section (i) dated 24-4-1981 is hereby republished below for general information.

By order of the Governor,

G. Somanathan,

Additional Secretary.

GOVERNMENT OF INDIA

Ministry of Agriculture

(Department of Food)

ORDER

New Delhi, the 24th April, 1981.

G. S. R. 308 (E)/Ess. Com./Sugar.—In exercise of the powers conferred by clause 5 of the Sugar (Control) Order, 1966, the Central

Government hereby directs that every producer of Khandsari (open pan sugar) shall—

(1) declare his opening stocks of khandsari, as on the 30th April, 1981 on or before the 5th May, 1981 and also the quantity produced in eachmonth thereafter till the 31st August, 1981 before the 5th of every succeeding month, to the specified authority;

(2) sell and despatch the stocks as on the 30th April, 1981, declared in accordance with the provisions of sub-clause (1) together with those produced after the 30th April, 1981, and upto 31st August, 1981, latest by the 30th September 1981, in the following manner, namely:—

(i) Not less than 20 per cent of the opening stocks as on the Ist May, 1981 during the month of May, 1981;

(ii) Not less than 25 per cent of the opening stocks as on the 1st June, 1981 during the month of June, 1981;

(iii) Not less than 30 per cent of the opening stocks as on the Ist July, 1981 during the month of July, 1981;

(iv) Not less than 35 per cent of the opening stocks as on the Ist August, 1981 during the month of August, 1981; and

(v) The opening stocks as on the Ist September, 1981, during the month of September, 1981;

(3) furnish particulars of stocks, production, sales and despatches of Khandsari for each month latest by the 7th day of the following month to the specified authority:

Provided that nothing in sub-clauses (2) and (3) shall apply to the stocks of khandsari required to be delivered by a producer to the State Government or the Union Territory Administration, as levy under any order issued by the State Government or the Union Territory Administration, in this behalf.

Explanation.—For the purpose of this order, "specified authority" means the Collector of the District in which the producer's khandsari unit is located or such other authority as the State Government or the Union Territory Administration may specify in this behalf.

2. This order shall come into force at once.

[No. 9-15/81-SPY(DII)]

(Sd.)

C. N. Raghavan,

Joint Secretary (Sugar).

PRINTED AND PUBLISHED BY THE S. G. P. AT THE GOVERNMENT PRESS, TRIVANDRUM, 1981